IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No.4077 of 2007

For Approval and Signature:
HONOURABLE MR.JUSTICE D.A.MEHTA Sd/-

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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BANK OF INDIA - Petitioner(s)
Versus
PANKAJ DILIPBHAI HEMNANI & 2 - Respondent(s)

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Appearance :
MR SANDEEP N BHATT for Petitioner(s) : 1,
DR MAHESH THAKAR for Respondent(s) : 1 - 2.
MR UMANG OZA, AGP for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA
Date : 12/04/2007
ORAL JUDGMENT

(1) In light of the view that the Court is inclined to take, the petition is taken up for final hearing. RULE. The learned advocates appearing for the respective parties are directed to waive service.

(2) This petition has been filed praying for the following reliefs:

"8. On the facts and circumstances mentioned hereinabove, the petitioner prays to Your Lordships that:

A) Be pleased to admit the present petition for final disposal at admission stage.

B) Be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction to quash and set aside the impugned judgment and order passed by the District Magistrate, Vadodara – respondent No.3 herein MAG. Vashi No.776 of 2006 dated 28.6.2006 and to pass further order directing respondent No.3 to pass fresh decision on the application under Section 14 of the Securitisation Act.

C) Pending admission and final disposal of the petition, this Honourable Court may be pleased to direct respondent Nos. 1 and 2 to furnish some securities for dues of the bank before this Hon'ble Court which may be deemed fit in the interest of justice and grant appropriate interim relief looking to the special facts and circumstances of the present case and nature of the petition.

D) Such other and further relief that is just, fit and expedient in the facts and circumstances of the case may be granted."

(3) The facts are not disputed at least in so far as the present proceedings are concerned. The petitioner-Bank advanced loan on 10.11.2000 to the tune of Rs.15,00,000/- to respondent Nos.1 and 2. As the liability was not discharged and the outstanding dues had swelled to Rs.17,65,501/-, on 28.03.2003 proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Securitisation Act) were initiated by issuance of notice under Section 13(2) of the Securitisation Act by the petitioner-Bank. It is the say of the petitioner-Bank that on 14.10.2003 the petitioner-Bank sought to recover possession from the respondent Nos.1 and 2, but because of obstruction by the said respondents, on 30.11.2005 the petitioner moved District Magistrate & Collector, Vadodara under Section 14 of the Securitisation Act. On 28.06.2006, respondent No.3 i.e. the District Magistrate & Collector, Vadodara rejected the application under Section 14 of the Securitisation Act. It is this order which has been challenged by the petitioner-Bank in this petition.

(4) Heard the learned advocates appearing on behalf of the respective parties.

(5) Section 14 of the Securitisation Act reads as under:

> "14. **Chief Metropolitan Magistrate or District Magistrate to assist secured creditor in taking possession of secured asset**.---(1) Where the possession of any secured assets is required to be taken by the secured creditor or if any of the secured assets is required to be sold or transferred by the secured creditor under the provisions of this Act, the secured creditor may, for the purpose of taking possession or control of any such secured asset, request, in writing, the Chief Metropolitan Magistrate or the District Magistrate within whose jurisdiction any such secured asset or other documents relating thereto may be situated or found, to take possession thereof, and the Chief Metropolitan Magistrate or, as the case may be, the District Magistrate shall, on such request being made to him---
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> (a) take possession of such asset and documents relating thereto; and
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> (b) forward such assets and documents to the secured creditor.
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> (2) For the purpose of securing compliance with the provisions of sub-section (1), the Chief Metropolitan Magistrate of the District Magistrate may take or cause to be taken such steps and use,

or cause to be used, such force, as may, in his opinion, be necessary.

(3) No act of the Chief Metropolitan Magistrate or the District Magistrate done in pursuance of this section shall be called in question in any court or before any authority."

(6) On a plain reading it is apparent that the said provision is a procedural provision whereunder the Chief Metropolitan Magistrate or the District Magistrate, (the Authority) as the case may be, shall, on a request being made to him – (a) take possession of such asset and documents relating to the assets; AND (b) forward such assets and documents to the secured creditor. Under sub-section (2) of Section 14 of the Securitisation Act the authority is empowered to take such steps and use such force as may be necessary for taking possession of the secured assets and the documents relatable thereto. Under sub-section (3) of Section 14 of the Securitisation Act, such act of the authority is protected and the action shall not be questioned in any Court or before any authority. Thus, it is apparent that the role envisaged by the legislature in so far as the Authority is

concerned, is a ministerial role in the form of rendering assistance and exercising powers by virtue of the authority vested in the District Magistrate or the Chief Metropolitan Magistrate including use of force as may be necessary. The said Authority, namely, the Chief Metropolitan Magistrate or the District Magistrate is not vested with any adjudicatory powers. There is no other provision under the Securitisation Act in exercise of which the said Authority, who is approached by a secured creditor, can undertake adjudication of any dispute between the secured creditor and the debtor or the person whose property is the secured asset of which possession is to be taken. If such adjudicatory powers were to be vested in the Authority, the Securitisation Act would have made a specific provision in this regard.

(7) Section 13(4) of the Securitisation Act provides for various measures a secured creditor may take to recover the secured debt; one of such measures is to take possession of the secured asset. A person

aggrieved by any of the measures referred to in sub-section (4) of Section 13 of the Securitisation Act is granted a right to make an application to the Debts Recovery Tribunal (the Tribunal) within the prescribed period under Section 17(1) of the Securitisation Act. Under sub-sections (2), (3) and (4) of Section 17 of the Securitisation Act the statute has provided a complete code, including the powers to the Tribunal to declare any of the measures taken by the secured creditor under Section 13(4) of the Securitisation Act invalid and consequential restoration of possession to the person from whom the possession was taken. A person aggrieved by any order made by the Tribunal under Section 17 of the Securitisation Act has a statutory right of appeal under Section 18 of the Securitisation Act. Therefore, under the guise of acting under Section 14 of the Securitisation Act the Authority cannot be permitted to usurp statutory powers vested in the Tribunal.

(8) Under Section 34 of the Securitisation Act jurisdiction of any Civil Court to entertain any suit or proceeding

in respect of any matter which the Tribunal or the Appellate Tribunal is empowered by or under the Securitisation Act to determine is specifically divested; furthermore, no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred under the Securitisation Act. Thus the legislative scheme is clear : Sections 17 and 18 provide for a statutory remedy before the Tribunal and the Appellate Tribunal, while simultaneously Civil Court and any other authority are prohibited from dealing with the subject matter which can be exclusively determined by the Tribunal.

(9) Hence, the Authority who is called upon to act under Section 14 of the Securitisation Act can only assist, nay, is bound to assist the secured creditor in taking possession of the secured asset. Any dispute between the parties regarding the secured asset raised before the Authority cannot be gone into by the Authority; the Authority has to relegate the aggrieved person to seek statutory remedy under the Securitisation Act after taking possession and handing over to the

secured creditor. The Authority cannot be permitted to read anything beyond this is Section 14 of the Securitisation Act.

(10) If the impugned order is examined in light of the aforesaid settled legal position it becomes apparent that respondent No.3-District Magistrate has without realizing the limited scope of powers available under Section 14 of the Securitisation Act acted beyond the jurisdiction statutorily vested in the said Authority. Various observations made by the District Magistrate are not warranted in light of the limited powers available to the Authority under Section 14 of the Securitisation Act. The impugned order dated 28.06.2006, therefore, cannot be permitted to stand and operate. Therefore, order No.MAG.Vashi. 776 of 2006 dated 28.06.2006 (Annexure-B) is hereby quashed and set aside and the proceedings restored to file of respondent No.3-District Magistrate & Collector, Vadodra. The application dated 30.09.2005 made by the petitioner-Bank shall stand revived and respondent No.3 is directed to pass an order in

accordance with law for taking over possession and handing over the same to the petitioner-Bank.

(11) The petition is allowed accordingly. Rule made absolute . There shall be no order as to costs.

Sd/-
[D.A. MEHTA, J]

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Bhavesh*